

REMARKS

This Amendment After Final Rejection is submitted in response to the outstanding final Office Action, dated December 11, 2007. Claims 1 through 25 are presently pending in the above-identified patent application. In this response, applicant proposes to amend
5 claims 1, 11, and 21. No additional fee is due.

This amendment is submitted pursuant to 37 CFR §1.116 and should be entered. The Amendment places all of the pending claims, i.e., claims 1 through 25, in a form that is believed allowable, and, in any event, in a better form for appeal. It is believed that examination of the pending claims as amended, which are consistent with the previous record herein, will not
10 place any substantial burden on the Examiner.

In the Office Action, the Examiner rejected claims 1-25 under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for progressively reducing, does not reasonably provide enablement for progressively selected from a group of more than one transmission rate in claims 1, 11, and 21. The Examiner rejected claims 1-10 and 21-25 under 35
15 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The Examiner also rejected claims 1-25 under 35 U.S.C. §102(b) as being anticipated by Johnson et al. (European Patent Number EP 1 096 729 A1; hereinafter Johnson).

Section 112, First Paragraph, Rejections

20 Claims 1-25 were rejected under 35 U.S.C. §112, first paragraph, because the specification, while being enabling for progressively reducing, does not reasonably provide enablement for progressively selected from a group of more than one transmission rate in claims 1, 11, and 21. In particular, the Examiner asserts that the specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to use the
25 invention commensurate in scope with these claims. In the Response to Arguments section of the final Office Action, the Examiner asserts that, in the present specification, “the reduction, not the selection, is what is done progressively.”

Applicants maintain that progressively decreasing a retransmission rate inherently requires that a transmission rate is progressively selected from a group of more than one transmission rate. In any case, to address the Examiner's concerns, Applicants have amended the independent claims to require that the retransmission rate is progressively *decreased to at least one of two or more lower data rates*. Support for this amendment can be found on page 2, lines 21-22, and page 3, lines 3-13, of the originally filed disclosure. Applicants believe that this amendment addresses the Examiner's concerns and respectfully request that the section 112, first paragraph, rejection be withdrawn.

Section 112, First Paragraph, Rejections

Claims 1-10 and 21-25 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Regarding claim 1, the Examiner asserts that it is unclear whether the "current frame" in lines 3 and 4 is part of the "transmission of data" in line 2 because "an acknowledgement" in line 4 indicates that there is a transmission of the current frame. Regarding claim 21, the Examiner asserts that it is unclear whether the "current frame" in lines 3 and 4 and the "subsequent frame" in line 5, are part of the "transmission of data" in line 2 because "an acknowledgement" in line 4 indicates that there is a transmission of the current frame and "said transmission rate for a subsequent frame" in lines 4-5 indicates that there is a transmission of the subsequent frame." The Examiner also asserts that there is insufficient antecedent basis for the term "said transmission rate" in claim 21.

Claims 1 and 21 have been amended to indicate that the "current frame" is part of the "transmission of data" and claim 21 has been amended to correct the antecedent basis of the cited term. Applicants believe that these amendments address the Examiner's concerns and respectfully request that the section 112, second paragraph, rejection be withdrawn.

Independent Claims 1, 11 and 21

Independent claims 1, 11, and 21 were rejected under 35 U.S.C. §102(b) as being anticipated by Johnson. Regarding claims 1 and 11, the Examiner asserts that Johnson teaches a rate fallback mechanism (FIG. 2; paragraph [0024]) that reduces a retransmission rate only for a

current frame (step 406 in FIG. 4; paragraph [0028]; col. 10, lines 5-6) when an acknowledgement is not received for said current frame (step 405 in FIG. 4; paragraph [0028]; col. 9, line 58, to col. 10, line 1).

Applicants note that Johnson teaches that the transmission rate of a data packet is reduced from a "higher data rate" to a "lower data rate." Johnson does *not*, however, disclose or suggest that the reduced retransmission rate is *progressively decreased to at least one of two or more lower data rates*. Independent claims 1, 11, and 21 have been amended to require wherein said reduced retransmission rate is progressively decreased to at least one of two or more lower data rates. Support for this amendment can be found on page 2, lines 21-22, page 3, lines 3-13, and page 6, lines 9-13, of the originally filed disclosure.

Thus, Johnson does not disclose or suggest wherein said reduced retransmission rate is progressively decreased to at least one of two or more lower data rates, as required by independent claims 1, 11, and 21, as amended

Dependent Claims 2-10, 12-20 and 22-25

Dependent claims 2-10, 12-20, and 22-25 were rejected under 35 U.S.C. §102(b) as being anticipated by Johnson

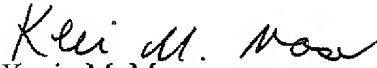
Claims 2-10, 12-20, and 22-25 are dependent on claims 1, 11, and 21, respectively, and are therefore patentably distinguished over Johnson because of their dependency from amended independent claims 1, 11, and 21 for the reasons set forth above, as well as other elements these claims add in combination to their base claim.

All of the pending claims following entry of the amendments, i.e., claims 1-25, are in condition for allowance and such favorable action is earnestly solicited.

If any outstanding issues remain, or if the Examiner has any further suggestions for expediting allowance of this application, the Examiner is invited to contact the undersigned at the telephone number indicated below.

The Examiner's attention to this matter is appreciated

Respectfully submitted,



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